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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,270	10/21/2003	Daniel Py	INSC-138.1	4941

7590 07/28/2006  
McCarter & English, LLP  
CityPlace I  
185 Asylum Street  
Hartford, CT 06103

EXAMINER
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CARTAGENA, MELVIN A

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/691,270

Applicant(s)

PY ET AL.

Examiner

Melvin A. Cartagena

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3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 and 37-41 is/are pending in the application.
- 4a) Of the above claim(s) 20,21,40 and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,7-10,15-19,22-34,38 and 39 is/are rejected.
- 7) ☒ Claim(s) 5,6,11-14,35 and 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6252004&amp;8012005</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 12 is objected to because of the following informalities: Claim 12 recites the limitation "the stop surface" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 2, 7-10, 15, 18, 19, 26, 31 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,254,579 to Cogger et al.

Cogger shows an ophthalmic dispenser as seen in Figs. 1-3, having a body defining a fluid reservoir 14 within the vial 12, a longitudinal extending casing 84, a pump 20 coupled in fluid communication with the reservoir and including a slide 22 defining an axial passageway,

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see Fig. 3, a piston 72, a compression zone of reduced diameter as seen in the Figs. 2 and 3 where the piston forms a fluid-tight seal, a first portion 76, a second portion 108, a first actuated position, seen in Fig. 2, and a second rest position, seen in Fig. 3, a nozzle 16 having a pressure actuated valve and an axially extending valve seat 96, an outlet 104, a spring 124, a flexible valve cover 80 moveable between a normally closed position to an open position by manually applying pressure on the front of element 112 and the back of a second actuator element 58.

In reference to claim 9:

When the device is in the rest position the tip of the piston 72 is located in the second portion, see Fig. 3.

In reference to claim 10:

See column 4, lines 66 and 67 and column 5, lines 1-20.

In reference to claim 19:

The casing has an outer envelope 140 defining a shape that is substantially the same as the shape of the fluid delivery system.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 4, 17, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,254,579 to Cogger et al. in view of US 6,478,196 to Fuchs.

Cogger shows all claimed features as discussed above except for a trigger actuator moving transverse to the axis of the pump and having a pivot point with the housing at a first end and a pivot point with the pump to move the pump along the pump's axis. Fucks shows a dispenser as seen in Figs. 1 and 2, having an actuator 15 moving in the direction, indicated by arrow 14, transverse to the axis of the pump 8 when actuated, the actuator pivots with the housing 59 at point 11 and pushes along the pump's axis at pivot point 17, see column 3, lines 22-34. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Cogger to include a transverse actuator to permit all finger of the user's hand to surround and support the dispenser to facilitate operation, while providing the user with a more favorable grip as taught by Fuchs.

6. Claims 16, 18, 19, 22-25, 27-31 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,254,579 to Cogger et al. in view of US 6,524,287 to Cogger.

Cogger ('579) shows all claimed features as discussed above except for the cartridge being replaceable and surrounded by a two parts casing having a shape substantially the same as the shape of the fluid storage and delivery system and an eyelid depressor engageable with the facial tissue. Cogger ('287) shows a housing 12 made of two separate conforming shells 40 and 42 with substantially the same shape as the shape of the replaceable fluid storage and delivery system 10, see Fig. 2, and an eyelid depressor 36. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Cogger ('579) to include a reusable housing made out of two parts to both facilitate manufacture of the housing and assembly of the apparatus and to also include an eyelid support in order to steady the dispenser nozzle at a fixed distance from a patient's eye as taught by Cogger ('287).

***Allowable Subject Matter***

7. Claims 5, 6, 11-14, 35 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stahl shows an eye drop dispenser. Benktzon shows an eye fluid applicator. Hennemann shows a liquid sprayer. Von Schuckmann shows a pump dispenser.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924.

The examiner can normally be reached on T-F (7:30AM to 6:00 PM).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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